

STATE OF MICHIGAN
IN THE SUPREME COURT

COUNTY ROAD ASSOCIATION OF MICHIGAN,
a Michigan nonprofit corporation, and CHIPPEWA
COUNTY ROAD COMMISSION, a public body
corporate,

Plaintiffs-Appellees,

v

125665
JOHN M. ENGLER, GOVERNOR OF THE STATE OF
MICHIGAN; GREG ROSINE, DIRECTOR OF THE
MICHIGAN DEPARTMENT OF TRANSPORTATION;
MICHIGAN DEPARTMENT OF TRANSPORTATION;
DUANE E. BERGER, DIRECTOR OF THE MICHIGAN
DEPARTMENT OF MANAGEMENT & BUDGET;
MICHIGAN DEPARTMENT OF MANAGEMENT &
BUDGET; DONALD H. GILMER, STATE BUDGET
DIRECTOR; DOUGLAS B. ROBERTS, STATE
TREASURER; MICHIGAN DEPARTMENT OF
TREASURY; CANDICE S. MILLER, SECRETARY
OF STATE; and MICHIGAN DEPARTMENT OF
STATE,

Defendants-Appellants,

and

MICHIGAN PUBLIC TRANSIT ASSOCIATION;
ANN ARBOR TRANSPORTATION AUTHORITY,
THE CAPITAL AREA TRANSPORTATION
AUTHORITY, and SUBURBAN MOBILITY
AUTHORITY FOR REGIONAL TRANSPORTATION,

Intervening Plaintiff-Appellees.

Supreme Court

No. _____

Court of Appeals

No. ~~245951~~

245767

Lower Court File

No. 02-308-CZ

FILED

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COUNTY ROAD ASSOCIATION OF MICHIGAN'S BRIEF IN
SUPPORT OF MICHIGAN PUBLIC TRANSIT ASSOCIATION, ANN
ARBOR TRANSPORTATION AUTHORITY, SMART AND CATA'S
APPLICATION FOR LEAVE TO APPEAL TO SUPREME COURT

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STATEMENT OF QUESTIONS INVOLVED

I. Did the Trial Court abuse its discretion when it concluded that Intervenor/Appellants were likely to succeed on the merits?

The Court of Appeals answers "Yes."

The Trial Court answers "No."

Plaintiffs/Appellants answer "No."

Intervenors/Appellants answer "No."

Defendant/Appellees answer "Yes."

II. Are the Defendants/Appellees barred from raising the issue of "severability" on appeal for failure to raise it with the Trial Court?

The Court of Appeals answers "No."

The Trial Court did not answer this question.

Plaintiffs/Appellants answer "Yes."

Intervenors/Appellants answer "Yes."

Defendant/Appellees answer "No."

III. Should this Court determine it appropriate to decide Question II, is Defendant/Appellees' "severability" argument meritless?

The Court of Appeals answers "No."

The Trial Court did not answer this question.

Plaintiffs/Appellants answer "Yes."

Intervenors/Appellants answer "Yes."

Defendant/Appellees answer "No."

IV. Did the Trial Court abuse its discretion when it properly concluded that Intervenor/Appellants would suffer irreparable harm in the absence of an injunction?

The Court of Appeals did not answer this question.

The Trial Court answers "No."

Plaintiffs/Appellants answer "No."

Intervenors/Appellants answer "No."

Defendants/Appellees answer "Yes."

V. Did the Trial Court abuse its discretion when it properly concluded that without the preliminary injunction the public interest would be harmed?

The Court of Appeals did not answer this question.

The Trial Court answers "No."

Plaintiffs/Appellants answer "No."

Intervenors/Appellants answer "No."

Defendants/Appellees answer "Yes."

VI. Did the Trial Court abuse its discretion when it properly concluded that any harm to Defendants/Appellees was outweighed by the harm to Intervenors/Appellants?

The Court of Appeals did not answer this question

The Trial Court answers "No."

Plaintiffs/Appellants answer "No."

Intervenors/Appellants answer "No."

Defendants/Appellees answer "Yes."

THE ORDERS APPEALED FROM AND RELIEF SOUGHT

The Court of Appeals issued an opinion on January 13, 2004, reversing the decision of the Trial Court, which issued a preliminary injunction enjoining the State Defendants from transferring funds from the Comprehensive Transportation Fund to the General Fund pursuant to Executive Order.

Plaintiffs-Appellants request that this Honorable Court grant their Application for Leave to Appeal, reverse the decision of the Court of Appeals, and reinstate the Trial Court's decision.

INTRODUCTION

The County Road Association of Michigan (“CRAM”) is CRAM is a statewide organization whose membership includes every county road commission within the State of Michigan, as well as those counties that elected the charter form of government and whose county road system is managed as a department of county government. All 83 Michigan counties are members of CRAM through their respective county road commissions or public works departments. Wayne County, one of CRAM’s members, is the only county among all of Michigan’s 83 counties that no longer has a road commission a separate administrative entity of county government.

Plaintiff Chippewa County Road Commission is a public body corporate with its principal offices in Sault Ste. Marie, Michigan whose official duties include the maintenance and construction of roads within Chippewa County and the formation of policy relative to the roads under its jurisdiction.

County road commissions are public bodies corporate that act as administrative boards only whose functions are limited by statute to the formation of policy and the performance of official duties imposed by law. Oakland Road Comm’rs v MPCGA, 456 Mich 590; 575 NW2d 751 (1998), MCL 224.9(1) Road commissions do not have the power to tax.

CRAM and the Chippewa County Road Commission initiated this action in which it alleged improper transfers of constitutionally dedicated transportation funds and that constitutionally dedicated transportation funds were used for purposes not permitted by the constitution. The Michigan Public Transit Association, Ann Arbor Transportation Authority the Suburban Mobility Authority for Regional Transportation and the Capital Area Transportation Authority (collectively the “Intervenors”) intervened and joined CRAM

challenging the transfer constitutionally dedicated transportation funds by executive order as a direct violation of the Governor's executive order powers. The issue raised in this appeal relates to only one count of a five-count complaint. The other issues that are not part of this appeal allege essentially that constitutionally dedicated funds were used for non-transportation purposes.

CRAM files this brief in Support of the Intervenors' Application for Leave to Appeal because the questions presented that relate to the interpretation of Art IX §9 are of critical importance to its members. CRAM submits that the proper interpretation of Art IX §9 and the principals of constitutional interpretation are significant to the jurisprudence of this State.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

For the purposes of the instant Application for Leave to Appeal, Plaintiffs-Appellants, County Road Association of Michigan, and Chippewa County Road Commission, hereby adopt the Statement of Facts as presented by Intervenors/Appellants in their Application for Leave to Appeal, filed with this Court on February 24, 2004.

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LEGAL ARGUMENT

A. Standard of Review

The grant of a preliminary injunction is reviewed for an abuse of discretion. Michigan Coalition of State Employee Unions v Michigan Civil Service Comm'n, 465 Mich 212, 217; 634 NW2d 692 (2001); Holly Twp v Dep't of Natural Resources, 440 Mich 891; 487 NW2d 753 (1992); Bratton v DAIE, 120 Mich App 73, 79; 327 NW2d 396 (1982). An abuse of discretion occurs when the decision is so palpably and grossly violative of fact and logic that it evidences perversity of will, defiance of judgment, and passion or bias. Dacon v Transue, 441 Mich 315, 329; 490 NW2d 369 (1992); Elia v Hazen, 242 Mich App 374, 377; 619 NW2d 1 (2000). As a result the decision to grant preliminary injunction is in the sound discretion of the trial court, and this Court will "rarely interfere with the exercise of such discretionary power, and only then upon a showing of palpable abuse thereof." Fleming v Heffner & Fleming, 263 Mich 561, 563-64; 248 NW 900 (1933)(relying on Freeman v Mitchell, 198 Mich 207; 164 NW 445 (1917)).

As explained in greater detail below, the Court of Appeals erred when it determined that the trial court abused its discretion in granting the preliminary injunction. Quite simply, nothing presented by the State Defendants in the Court of Appeals could have supported such a decision. Accordingly, this Court should grant this Application for Leave to Appeal to correct the error of the Court of Appeals on this significant issue of public importance.

B. Standard For Granting Injunctive Relief

Under Michigan law, a preliminary injunction may be granted when the following four factors are present:

1. No harm the public interest;

2. The harm to the applicant in absence of the injunction outweighs harm to opposing party if the injunction is granted;
3. Demonstration by the applicant of a likelihood of success on the merits;
4. Demonstration that the applicant will suffer irreparable harm if the injunction is not granted.

Michigan State Employees' Ass'n v Dep't of Mental Health, 421 Mich 152, 157; 365 NW2d 93 (1984); Campau v McMath, 185 Mich App 724, 728-729; 463 NW2d 186 (1990). The object of a preliminary injunction is to preserve the status quo, so that upon the final hearing the rights of the parties may be determined without injury to either. Psychological Services of Bloomfield, Inc v Blue Cross and Blue Shield of Michigan, 144 Mich App 182, 185; 375 NW2d 382 (1985).

In the present case, the State Defendants failed to show that the trial court abused its discretion when it determination that each of the above-listed factors weighed in favor of granting preliminary injunction. Nevertheless, the Court of Appeals found an abuse of discretion and dissolved the injunction. The Court's decision was based primarily on its determination that the general sales tax revenues, which were transferred from the CTF by the Executive Order, were not constitutionally dedicated, and, therefore, Plaintiffs/Appellants and Intervenor/Appellants were not likely to prevail on the merits. In reaching its decision the Court of Appeals mistakenly found that the language of Const 1963, art 9, § 9, which dedicates those general sales tax revenues to the CTF, was ambiguous. However, art 9, § 9, is not ambiguous, and the trial court did not abuse its discretion. Thus, the Court of Appeals erred.

C. The Trial Court Did Not Abuse Its Discretion When It Determined That Plaintiffs-Appellants and Intervenors Were Likely To Prevail On The Merits

1. The Governor's Authority under Const 1963, art 5, § 20 is Limited

In accordance with the Michigan Constitution, the Governor may reduce expenditures in limited circumstances. Const. 1963, art 5, § 20 provides:

No appropriation shall be a mandate to spend. The governor, with the approval of the appropriating committees of the house and the senate, shall reduce expenditures authorized by appropriation whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based. Reductions in expenditures shall be made in accordance with the procedures prescribed by law. The governor may not reduce expenditures of the legislative or judicial branches or from funds constitutionally dedicated for specific purposes.

Although there are several restrictions to the Governor's ability to reduce expenditures, at issue is the constitutional restriction against reduction of funds that are "constitutionally dedicated for specific purposes." This Court has held that because of the restrictions imposed by art 5, § 20, the Governor has no authority to reduce expenditures in a manner that violates other provisions of Michigan's Constitution. Musselman v Governor, 448 Mich 503, 519; 533 NW2d 237 (1995).

In this case, the general sales tax revenue that forms part of the CTF are constitutionally dedicated by the unambiguous language of the third paragraph of Const 1963, art 9, § 9. Thus, notwithstanding the erroneous decision of the Court of Appeals, the Governor was without authority to issue an Executive Order that reduced these constitutionally dedicated funds.

2. The Court of Appeals Erred When It Found that Const. 1963, art 9 § 9 was Ambiguous.

The Court of Appeals' erroneous decision that the Executive Order did not affect constitutionally dedicated funds was based primarily on its determination that Const. 1963 art 9, § 9 was ambiguous. However, while this section has been drafted in a style that makes reading cumbersome, it certainly is not ambiguous. Rather, upon careful reading, its meaning is plain and clear.

Const 1963, art. 9, § 9 consist of four separate paragraphs. The third paragraph, which is a single sentence consisting of 146 words, is the most relevant to this appeal. In its entirety, the paragraph provides:

The balance, if any, of the specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel motor vehicles upon highways and on registered motor vehicles, after the payment of necessary collection expenses; 100 percent of the specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel aircraft and on registered aircraft, after the payment of necessary collection expenses; and not more than 25 percent of the general sales taxes, imposed directly or indirectly on fuels sold to propel motor vehicles upon highways, on the sale of motor vehicles, and on the sale of the parts and accessories of motor vehicles, after the payment of necessary collection expenses; shall be used exclusively for the transportation purposes of comprehensive transportation purposes as defined by law.

The predicate of this sentence is "shall be used exclusively for the transportation purposes of comprehensive transportation purposes as defined by law." Notably, the adverb "exclusively," which modifies the verb "used" is synonymous with the word "solely." Webb Academy v Grand Rapids, 209 Mich 523, 540-541; 177 NW 290 (1920). Moreover, "shall" is a mandatory directive. Macomb Co Road Comm'rs v Fisher, 170 Mich App 697, 700; 428

NW2d 744 (1988). Consequently, the subjects of the sentence must be used solely for comprehensive transportation purposes.

The paragraph sets out three subjects that must be used solely for comprehensive transportation purposes. A summarized list of these three subjects is as follows:

- (1) The balance, if any, of the specific taxes, except general sales taxes, imposed on [motor fuel and vehicle registration];
- (2) 100 percent of taxes imposed on aircraft fuel and aircraft registration; and,
- (3) A percentage of the general sales tax [imposed on the sale of motor fuel, motor vehicles, vehicle parts and accessories].

It is undisputed that the tax revenue addressed by the first two subjects is constitutionally dedicated. The only issue is whether the third subject is constitutionally dedicated.

The third subject of 1963 Const, art 9, § 9 appears in the third clause of the paragraph and, in its entirety, provides:

"not more than 25 percent of the general sales taxes, imposed directly or indirectly on fuels sold to propel motor vehicles upon highways, on the sale of motor vehicles, and on the sale of the parts and accessories of motor vehicles, after the payment of necessary collection expenses"

The clause identifies a percentage, not to exceed 25%, of the general sales tax¹ on three items:

(1) motor vehicle fuels, (2) motor vehicles, and (3) motor vehicle parts and accessories. As stated above, the predicate of the sentence is "shall be used exclusively for . . . comprehensive transportation purposes as defined by law." Although there is no mandate for the Legislature to dedicate any specific percentage of general sales tax, the only plausible understanding of the entire sentence is that once the legislature has dedicated a specific percentage, that general

¹ The general sales tax is 6% of gross taxable retail sales on tangible personal property. However, 2% is constitutionally dedicated to the school aid fund. See Const 1963, art 9, §§ 8, 11.

sales tax revenue raised on these three items must be used solely for comprehensive transportation purposes.

As a point of fact, the legislature has chosen to constitutionally dedicate the general sales tax revenue imposed on these three designated items for comprehensive transportation purposes. In pertinent part, MCL 205.75(4) provides:

“For the fiscal year ending September 30, 1988 and each fiscal year ending after September 30, 1988, of the 25% of the collections of the sale tax imposed at a rate of 4% directly or indirectly on fuels sold to propel motor vehicles upon highways, on the sale of motor vehicles, and on the sale of parts and accessories of motor vehicles by new and used car businesses, used car business, accessory dealer business, and gasoline station business as classified by the department of treasury . . . shall be deposited each year into the respective funds:

- (a) Not less than 27.9% to the comprehensive transportation fund.”

Accordingly, a fixed percentage of the general sales tax from the sale of motor vehicle fuels, motor vehicles, and motor vehicle parts and accessories is deposited in the comprehensive transportation fund; and, pursuant to the third clause of the third paragraph of Const 1963, art 9, § 9, those funds are constitutionally dedicated for “comprehensive transportation purposes as defined by law.”

Despite the plain meaning of this section, however, the State Defendants argued, and the Court of Appeals agreed, that Const 1963, art 9, § 9 is somehow ambiguous. The source of their confusion is the first paragraph of the section, which provides as follows:

“All specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel motor vehicles upon highways and to propel aircraft and on registered motor vehicles and aircraft shall, after the payment of necessary collection expenses, be used exclusively for transportation purposes as set forth in this section.”

This paragraph provides that the revenue raised from certain "specific taxes" be used exclusively for transportation purposes. Although general sales tax is excluded from the "specific taxes" that are constitutionally dedicated, this paragraph does not state that general sales tax can never become dedicated. Instead, it merely emphasized the distinction between the general sales tax and "[a]ll specific taxes." This same exclusion appears throughout Const. 1963, art. 9, § 9 whenever "specific taxes" are referenced.

However, simply because the general sales tax collected on motor vehicle and aircraft fuels and on registered motor vehicles and aircraft is not dedicated by the first paragraph of Art. 9 § 9, does prevent a subsequent dedication by constitutional amendment. The third paragraph was added to Art 9, § 9, by amendment in 1978, and that paragraph specifically dedicates a percentage of general sales tax revenue on motor vehicle fuels, motor vehicles, and vehicle parts and accessories for a specific transportation purpose. Thus, the only way to read 1963 Const., art. 9, § 9 without intentionally creating an ambiguity is to accept the obvious - the revenue raised by general sales tax on certain items is constitutionally dedicated by the third clause of the third paragraph of the section.

This point is made even more clear when the Court of Appeals reason for finding that an ambiguity exists is closely examined. In its opinion, the Court of Appeals stated that:

"[w]e conclude that the language of art 9, § 9 is ambiguous. It unequivocally exempts *all* sales taxes from the restrictions imposed on specific taxes but then simultaneously subjects *up to twenty-five percent* of general sales taxes to the very same restrictions." (original emphasis).

(Appendix A, p. 3). However, this observation is incorrect. The first paragraph of Const. 1963, art. 9, § 9 does not exempt all sales tax; rather, the first paragraph merely provides that

the general sales tax revenue on motor vehicle and aircraft fuels and on registered motor vehicles and aircraft are not included its dedication.

To illustrate this point more clearly, it is necessary to examine the first paragraph of Art. 9, § 9. Particular focus should be given to the enumerated items on which the "specific taxes" are levied, the revenue from which becomes dedicated. These enumerated items become readily apparent when they are highlighted within the relevant portions of the first paragraph as follows:

"All specific taxes . . . imposed . . . on **fuels sold or used to propel motor vehicles . . . and to propel aircraft and on registered motor vehicles and aircraft . . .** (emphasis added).

From this language it is clear that the first paragraph dedicates the revenue raised from all specific taxes levied on exactly two items:

- (1) motor vehicle and aircraft fuel, which is sold or used; and
- (2) registered motor vehicles and aircraft.

When the entire first paragraph is read, it is clear that these specific taxes on fuels, registered vehicles, and aircraft do not include the general sales tax on these same items. Simply stated, the general sales tax on motor vehicle fuel and aircraft fuel, as well as, general sales tax on registered motor vehicles and aircraft are not constitutionally dedicated by the first paragraph. By any reasonable construction, however, the exception of general sales tax in the first paragraph cannot exclude **all** general sales taxes on everything. Instead, the exception can refer **only** to the general sales tax on motor vehicle and aircraft fuel and registered vehicles and aircraft.

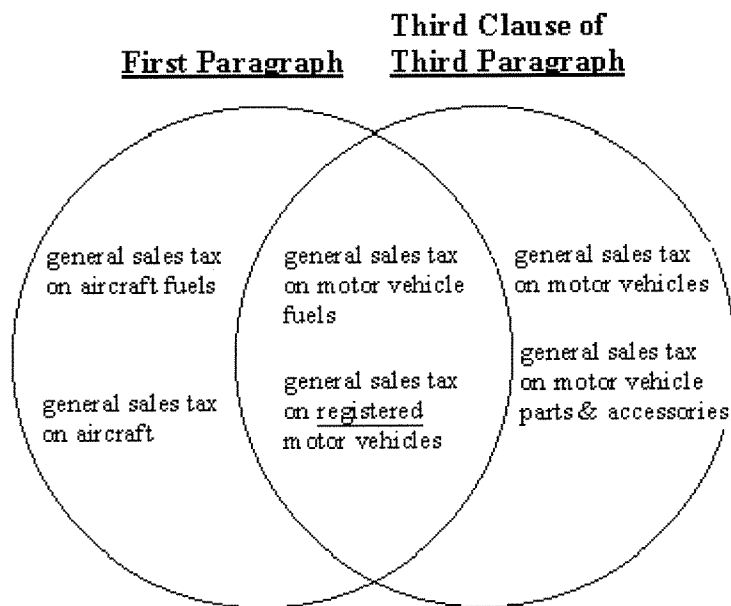
On the other hand, the third clause of the third paragraph of Const. 1963, art. 9, § 9 dedicates general sales tax levied on items **different** than those referenced to in the first

paragraph. As stated above, the third clause of the third paragraph allows the dedication of a percentage of the general sales tax raised on three items:

- (1) motor vehicle fuels,
- (2) motor vehicles, and
- (3) motor vehicle parts and accessories.

This is the first and only reference in Art 9, § 9 to general sales tax on motor vehicle parts and accessories. Accordingly, the exclusions of general sales tax in the first paragraph of Art 9 § 9 could not possibly be construed to refer to the sales tax on vehicle parts and accessories.

Perhaps the best way to portray this point is with the following illustration:



In short, simply because *some* general sales tax revenue are not specifically dedicated by one paragraph of art 9, § 9 is no reason to conclude that *other* general sales tax revenue levied on entirely different items cannot be dedicated by another paragraph. As such, the Court of Appeals was mistaken when it found that Const 1963 art 9, § 9 was ambiguous; and its decision that the general sales tax revenues within the CTF are subject to reduction by

Executive Order is error. Therefore, because the trial court did not abuse its discretion in finding that Plaintiff-Appellants and Intervenors were likely to prevail on the merits, this Court should reverse the Court of Appeals and reinstate the preliminary injunction.

3. Even if Const 1963, art 9, § 9, were Ambiguous, Which It is Not, Any Ambiguity Must be Resolved in Favor the Intent of the People

The primary rule of constitutional construction is to ascertain the common understanding of the people who adopted the provision. Traverse City School Dist v Attorney General, 384 Mich 390, 405; 185 NW2d 9 (1971). The rule can be stated as follows:

“[a] constitution is made for the people and by the people. The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it. [T]he intent to be arrived at is that of the people . . . in a sense most obvious to a common understanding.” (emphasis added)

Id. (quoting Cooley’s Const. Lim. 81).

Consequently, where the meaning of a constitutional amendment is "ambiguous" or subject to "alternative interpretations," its proper meaning and intent "may be gleaned from the circumstances under which the amendment was written and the purpose sought to be accomplished." Southeastern Michigan Transit Authority v Secretary of State, 104 Mich App 390, 403; 304 NW2d 846 (1981). Thus, the Court should never give the Constitution a strained construction. Traverse City, 384 Mich at 405.

The people of the State of Michigan intended for Const. 1963, art 9, § 9 to dedicate a percentage of general sales tax revenues, not to exceed 25%, to comprehensive transportation purposes. From its very beginnings, this section has used essentially used the same language to earmark funds for specific purposes. As originally ratified in 1938, Const 1908, art 10 § 22, provided that such taxes "shall . . . be used exclusively for highway purposes . . . and shall

not be diverted nor appropriated for any other purpose." Indeed, the delegates to the 1961 Constitutional Convention so clearly understood that Const 1908, art 10 § 22 "earmarked" the funds subject to it, that the Committee on Style and Drafting viewed the language "and shall not be diverted nor appropriated for any other purpose" as redundant.

Perhaps the best evidence of the people's intended meaning of Const 1963, art 9, § 9, however, is the ballot proposal that asked voters to accept or reject the 1978 amendment. This amendment, which was initially proposed by House Joint Resolution F, was the result of a compromise between proponents competing for different uses of gasoline and other motor vehicle tax revenues. Southeastern Michigan Transit Authority v Secretary of State, 104 Mich App 390; 304 NW2d 846 (1981). House Joint Resolution F became Proposal M on the 1978 general election ballot, and gave the voters at the November, 1978 election a clear description of the proposed amendment by articulating its elements and conditions.

In pertinent part, Proposal M stated provided as follows:

"THE PROPOSED AMENDMENT WOULD:

1. Provide that at least 90% of gas and license tax revenue be used exclusively for general road purposes.
2. Provide that the remainder of gas and license tax revenue and not to exceed 25% of sales tax on cars and parts be used exclusively for other transportation purposes."

(Cite)(emphasis added). The people of this State approved the amendment to Const 1963, art 9, § 9 based on this ballot.

The voters could have understood this language to mean only that both the "remainder of gas and license tax revenue" (i.e. the balance of the specific taxes) **and** some percentage

of sales tax, not to exceed 25%, on cars and parts would be used exclusively for "other transportation purposes" (i.e. comprehensive transportation purposes).

However, while the Court of Appeals acknowledged that the balance of specific taxes are constitutionally dedicated, it, nevertheless, found that general sales taxes were intended to be treated differently. In effect, the Court of Appeals found that only zero percent of general sales tax revenue was dedicated. This finding ignores the most obvious and common understanding of Proposal M. Clearly, the voters must have understood that by voting "Yes" on the proposal, that they were dedicating whatever percentage of the general sales tax that the Legislature chose to designate to other transportation purposes. Simply stated, the Court of Appeals construction of Const 1963, art 9, § 9 is painfully strained and in direct conflict with the intent of the people of this State. Thus, its decision that the trial court abused its discretion in err, and this Court should reverse.

D. The State Defendants Failed To Raise The Issue Of Severability Below And Are Thus Barred From Raising It On Appeal, And This Argument Is Without Merit

For the purposes of the instant Application for Leave to Appeal, Plaintiff-Appellants adopt the argument of Intervenor/Appellants.

E. The Trial Court Did Not Abuse Its Discretion When It Determined That The Plaintiff-Appellants and Intervenor-Appellants Would Be Irreparably Harmed If An Injunction Did Not Issue

For the purposes of the instant Application for Leave to Appeal, Plaintiff-Appellants adopt the argument of Intervenor/Appellants.

F. The Trial Court Did Not Abuse Its Discretion When It Determined That The Harm Caused By The State Defendants' Unconstitutional Actions And Harm To The Public Interest Was Significant And Far Outweighed Any Harm To Defendants Caused By Requiring Their Compliance With The Mandates Of The Michigan Constitution

For the purposes of the instant Application for Leave to Appeal, Plaintiff-Appellants adopt the argument of Intervenor/Appellants.

RELIEF

WHEREFORE, Plaintiffs-Appellants, County Road Association of Michigan, and Chippewa County Road Commission, respectfully request that this Honorable Court grant its Application for Leave to Appeal.

Respectfully submitted,

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Dated:  2004

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